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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) 659/2002

LEELA BAKSHI (SINCE DECEASED) ..... Plaintiff

Through: Mr. Divjot Singh Bhatia and Mr. Shreesh Chadha, Advocates

versus

CHANDER MOHAN & ORS. ..... Defendants

Through: Mr. Harvinder Singh, Advocate

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R

% 06.03.2024

I.A. 14468/2023(for Modification of the Judgment, Decree dated 28.11.2005 and Order dated 13.04.2012)

1. The present application under Section 151 CPC has been filed on behalf of the Plaintiff.

2. It is submitted in the application that on the basis of the consent of the parties, a consent Decree was made on 28.11.2005, according to which the plaintiff Mr. Vikram Bakshi was directed to furnish the "No Objection Certificate" of the plaintiff No 2-4, who were the Legal Heirs of Mr. Samrat Bakshi, brother of Mr. Vikram Bakshi.

3. However, the LRs of Mr. Samrat Bakshi were not contesting or appearing in the said matter.

4. The settlement *inter see* the Plaintiff No. 1 and Defendants in the partition Suit is therefore on a condition of "No Objection" being given by the other LRs is *non-est* and the Decree is inexecutable.

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5. Learned counsel for the plaintiff No. 1 submits that he has no contact with the plaintiff Nos. 2 to 4 and had neither undertaken to obtain "No Objection Certificate" from the plaintiff Nos. 2 to 4 nor is he in touch with them and cannot furnish the same.

6. A similar Application bearing I.A. 5835/2012 seeking modification of the Order dated 28.11.2005 was filed on behalf of the applicant/Vikram Bakshi, who is the legal heir of the deceased plaintiff. However, this Court *vide* its Order dated 13.04.2012 observed that there was no error apparent on the face of the records of the Order dated 28.11.2005 for which a Review Application can be entertained. It was further observed that apparently the applicant/Vikram Bakshi has not submitted the requisite document papers for drawing up the Decree. It was directed that the Decree be drawn and executed. Also, this Court observed that the plaintiff No. 1 may seek execution of the Decree in which the Executing Court may issue Notice to the other legal heirs and obtained their stand so that the Decree can be executed.

7. Thereafter, the Execution Petition No. 580/2017 was filed on behalf of the applicant/Vikram Bakshi, wherein it was observed that the Decree cannot be executed till the "No Objection Certificate" is submitted.

8. The Executing Court *vide* Order dated 01.02.2003 observed that the Decree Holder cannot be allowed to ensure that the properties without even informing the other legal heirs of his mother. The applicant is at liberty to take recourse to other legal remedies available with him in the event of non-service of the remaining legal heirs and dismissed the Execution Petition No. 580/2017 accordingly.

9. Hence, the present application has been filed seeking modification of

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the Judgment and Decree dated 28.11.2005 and Order dated 13.04.2012.

10. The present Suit was a Partition Suit which had been filed on behalf of the plaintiff, since deceased, against the defendants. The plaintiff Nos. 2 to 4 are the legal heirs of the brother, Shri Samrat Bakshi, of the deceased plaintiff.

11. The plaintiff No. 1 may have arrived at a compromise with the defendants, but it being a Partition Suit, the same could not have been said to be conclusive *inter se* all the properties which were the subject matter of the present Suit, in which the plaintiff Nos. 2 to 4 also had in interest. The plaintiff Nos. 2 to 4 may not have contested or their whereabouts may not have been known to the plaintiff No. 1, but the fact remains that the plaintiff Nos. 2 to 4 are the legal heirs of the brother of the deceased plaintiff and no settlement could have been arrived at between the plaintiff No. 1 and the defendants without their consent or on merits. Therefore, the Judgment and Decree dated 28.11.2005 being conditional and the condition being not satisfied is non-executable. There is no modification which can be done of the Judgment and Decree dated 28.11.2005, being conditional.

12. Accordingly, no modification of the Judgment and Decree dated 28.11.2005 and the Order dated 13.04.2012 is warranted.

13. No amendment or modification of the said Decree can be made at this stage on the ground of there being no objection by the Plaintiff Nos. 2-4.

14. The application is without merit and the same is hereby dismissed with liberty to the parties to seek appropriate remedies under the law.

NEENA BANSAL KRISHNA, J

MARCH 6, 2024/PT

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